



Agenda Date: 2/5/03  
Agenda Item: 3L

**STATE OF NEW JERSEY  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)**

CABLE TELEVISION

IN THE MATTER OF ALLEGED NON-COMPLIANCE BY )  
RCN OF NY, A WHOLLY-OWNED SUBSIDIARY OF RCN )  
CORPORATION, WITH THE REQUIREMENTS OF )  
N.J.S.A. 48:5A-15, 16, 17, AND 22 REQUIRING )  
MUNICIPAL CONSENT FROM THE CITY OF JERSEY )  
CITY AND A CERTIFICATE OF APPROVAL FROM THE )  
BOARD FOR NEWPORT COMMUNITY IN JERSEY CITY, )  
NEW JERSEY )

ORDER

DOCKET NO. CC03010023

**(SERVICE LIST ATTACHED)**

BY THE BOARD<sup>1</sup>:

The New Jersey Board of Public Utilities ("Board") and its Office of Cable Television ("OCTV"), pursuant to N.J.S.A. 48:5A-1 *et seq.*, have been granted general supervision and regulation of and jurisdiction and control over all cable television systems which operate within the State of New Jersey, subject only to the limitations of Federal law. Pursuant to this authority, the within matter was opened to the Board upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. RCN of New York ("RCN" or "respondent") is a wholly owned subsidiary of RCN Corporation, having offices at 105 Carnegie Street, Princeton, New Jersey. RCN operates a satellite master antenna system ("SMATV") in the Newport building complex in Jersey City, New Jersey.
2. The Newport building complex consists of Presidential Plaza, with four buildings and 1,504 rental units, the James Monroe complex with 443 units of condominiums, and the Towers of America, with five buildings and 1,600 residential units.
3. RCN provides video service to the residents of the Newport building complex through a SMATV system. In this system, signals are received via microwave from New York to a

---

<sup>1</sup> Commissioner Carol J. Murphy did not participate in the deliberations or vote on this matter.

centrally located antenna. The video signal is then distributed via coaxial cable in two separate conduits to the remaining buildings in the complex.

4. The conduits that distribute the signal run under two roads originally owned by the builders of Newport, but which were subsequently dedicated over to the City of Jersey City, and accepted by the City by Ordinance 93-051.

5. The dedication to Jersey City provides that the dedication was accepted subject to preexisting easements. Included in this is a "non-exclusive utility easement," memorialized in a First Amendment to Declaration of Easement, in Book 4386, Page 016, filed with the County of Hudson. This First Amendment to Declaration of Easement also includes a provision indicating "No Third Party Beneficiaries."

6. Under Federal law, a SMATV system will not be considered a cable system provided it "serves subscribers without using any public right-of-way." 47 U.S.C.A. § 522(7).

7. RCN's SMATV system uses the right-of-way when it crosses the dedicated streets in the Newport building complex.

8. RCN is not an owner, successor, assign, designee or nominee under the original easement declaration, and, even if it were, the easement clearly states that it does not run to the benefit of third parties, such as RCN.

9. Even in the event RCN has a right to access the "non-exclusive utility easement," based upon the public policy of ensuring the regulation of public rights-of-way, and made clear through the Federal Communications Commission's ("FCC") interpretation of the "use" issue, RCN uses the public right-of-way such that it is a cable system subject to regulation by the Board.

#### CONCLUSIONS OF LAW

RCN is a cable system under 47 U.S.C.A. § 522(7) with regard to its service to the Newport building complex in Jersey City such that it falls under the jurisdiction and control of the Board. Because RCN qualifies as a cable provider under Federal law, RCN must conform to the requirements of the New Jersey Cable Television Act, including filing of a Certificate of Approval under N.J.S.A. 48:5A-17(a) and filing for municipal approval from the City of Jersey City, N.J.S.A. 48:5A-22.

Accordingly, based upon the foregoing, the Board HEREBY ORDERS that:

1. RCN, within 60 days of the date of this Order, shall file a petition for a Certificate of Approval as required by N.J.S.A. 48:5A-17(a) and file for municipal approval from the City of Jersey City as required by N.J.S.A. 48:5A-22.

2. The within Order shall become a Final Order, such that the preliminary Findings of Fact and Conclusions of Law shall become final Findings of Fact and Conclusions of Law and the ordering provision contained herein above shall become fully effective and binding on respondent, at 5:00 p.m. on the 20th day following entry hereof unless, on or before that time, RCN requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law, by submitting to Kristi Izzo, Secretary, Board of Public Utilities, Two Gateway Center, New Jersey 07102, the following:

- a) A written request for modification or dismissal of the within Order;
- b) Any and all reasons why said findings and conclusions should be modified or dismissed; and
- c) Any and all documents or other written evidence supporting RCN's request for consideration and reasons therefor.

3. Any submissions will be reviewed by the Board, and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised through a submission during the 20-day period, or if the Board is not persuaded that submitted materials merit further consideration, a Final Order will be entered.

4. In the event that RCN's submissions establish a need for further proceedings, including, but not limited to, an evidentiary hearing, RCN shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein shall serve as notice of the factual and legal allegations in such proceedings.

5. If no submissions are received from respondent on or before the 20<sup>th</sup> day following entry of the within Order, the Board's Secretary shall, after ensuring that service was properly effectuated, inform respondent by letter, sent by certified mail return receipt requested, that the within Order has become a Final Order and is fully effective and binding on respondent.

DATED: February 20, 2003

BOARD OF PUBLIC UTILITIES  
BY:

(signed)

\_\_\_\_\_  
JEANNE M. FOX  
PRESIDENT

(signed)

\_\_\_\_\_  
FREDERICK F. BUTLER  
COMMISSIONER

(signed)

\_\_\_\_\_  
CONNIE O. HUGHES  
COMMISSIONER

(signed)

\_\_\_\_\_  
JACK ALTER  
COMMISSIONER

ATTEST:

KRISTI IZZO  
SECRETARY

### SERVICE LIST

Rinaldo D'Argenio  
Arturi, D'Argenio & Guagliardi  
210 Sylvan Avenue  
Englewood Cliffs, NJ 07632

RCN of NY  
825 Third Avenue  
2nd Floor  
New York, NY 10022

David McCourt  
RCN Corporation  
105 Carnegie Center  
Princeton, NJ 08540

Alexander Booth, Esq.  
City Attorney  
City of Jersey City  
280 Grove Street  
Jersey City, NJ 07302

Celeste M. Fasone, Director  
Office of Cable Television  
Two Gateway Center  
Newark, NJ 07102

William Furlong  
Office of Cable Television  
Two Gateway Center  
Newark, NJ 07102

Karen A. Marlowe  
Office of Cable Television  
Two Gateway Center  
Newark, NJ 07102